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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/921,096	07/31/2001	Kevin P. Headings	108.0009-00000	6782

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EXAMINER	
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ART UNIT	PAPER NUMBER
2623	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	09/921,096	HEADINGS ET AL.	
	Examiner	Art Unit	
	Michael Van Handel	2623	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2007*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-39* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-39* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ .
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____.

DETAILED ACTION

Response to Amendment

1. This action is responsive to an Amendment filed 10/18/2007. Claims **1-39** are pending. Claims **1**, **8**, **15**, **22**, and **29** are amended.

Response to Arguments

1. Applicant's arguments regarding claims **1**, **8**, **15**, **22**, and **29**, filed 10/18/2007, have been fully considered, but they are not persuasive.

Regarding claims **1**, **8**, **15**, **22**, and **29**, see the rejection under 35 USC 112, first paragraph below. The applicant argues that Payton does not disclose or suggest video content including groupings of media assets and associated metadata, the groupings determined by at least one criteria common to the media assets and not determined by content preference of a consumer. The examiner respectfully disagrees. As noted in the Office Action mailed 4/19/2007, Payton discloses a virtual on-demand digital delivery system 22 that includes a central distribution server 24, a high bandwidth digital transport system 26, a local server 28, and a low bandwidth back channel 30 (col. 4, l. 45-49 & Fig. 2). The central distribution server 24 includes a digital repository 34 for storing all of the digital items 36 that will be made available to subscribers, including videos, audio selections, and computer applications (col. 4, l. 55-58).

Payton further discloses a collaborative filtering system 42 that produces a list 44 of recommended items for each subscriber (col. 5, l. 12-16). The list may comprise only items that a particular subscriber has never previously requested (col. 5, l. 15-18). The examiner interprets

this as "groupings determined by at least one criteria common to the media assets and not determined by content preference of a consumer," as currently claimed. Payton also discloses that subscriber profiles may include demographic information about the subscriber, such as the subscriber's *general* likes and dislikes, which is used in producing a list 44 of recommended items (italicized for emphasis)(col. 5, l. 9-12). The examiner also interprets this as "groupings determined by at least one criteria common to the media assets and not determined by content preference of a consumer," as currently claimed. As such, the examiner maintains that Payton meets the limitation of "and not determined by content preference of a consumer," as currently claimed.

Claim Rejections - 35 USC § 112

1. The following is a quotation of the first paragraph of 35 U.S.C. 112:

> The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

2. Claims **1-39** are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Referring to claims **1**, **8**, **15**, **22**, and **29**, the examiner notes that the claimed phrase "and not determined by content preference of a consumer" lacks support in Applicant's specification. In the remarks filed 10/18/2007, Applicant states that support for the amended claims can be

found on page 3, lines 7-12 and page 4, lines 14-17 of Applicant's specification. Page 3, lines 7-12 recite "[t]he content management system then preferably selects media content for distribution to particular groups (publishing groups) of consumers based on, for example, geographical location, bit rate service, and contract terms, and aggregates the selected media content into a rollout. A rollout is a collection of content that is available for exhibition to consumers during a designated window of time." The examiner fails to find a recitation in support of "and not determined by content preference of a consumer" in this passage. The examiner notes that the "for example" indicates that the content selection basis list is not exclusive. Furthermore, each of these items may be interpreted as consumer content preferences. That is, a consumer may desire content applicable to their geographical location, bit rate service, and/or contract terms. Page 4, lines 14-17 of Applicant's specification recites "[t]he sending processor preferably includes a computer-based graphical user interface for retrieving a set of menu entries representative of a collection of media content whereupon a system operator (i.e., person overseeing the content distribution) may select a collection of media content for distribution." The examiner again fails to find a recitation in support of "and not determined by content preference of a consumer" in this passage.

Applicant's specification further recites that "[t]he receiving processor may be programmed to collect and report content usage (e.g., the amount of time the media content was viewed or listened to and consumer viewing or listening habits), and collect and report demographic data of a consumer using the media content. Such data and information may then be used to select media content to add to, supplement, or replace existing media content stored on the content database" (p. 4, lines 8-13). Similar language is found throughout Applicant's

specification (p. 9, lines 9-15; p. 16, lines 22-26; & p. 17, l. 1-2, 15-18). The examiner notes that consumers are directed to the content database or rollout based on their publishing group (p. 5, lines 9-10 & p. 9, lines 3-4). As such, Applicant's specification seems to indicate that media assets are grouped based on consumer content preferences.

Claims **2-7**, **9-14**, **16-21**, **23-28**, and **30-39** are rejected as being dependent on the claims addressed above.

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims **1-4**, **6-11**, **13-18**, **20-25**, **27-33**, **35**, **37-39** are rejected under 35 U.S.C. 102(b) as being anticipated by Payton.

Referring to claims **1**, **8**, **15**, **22**, and **29**, Payton discloses a system/method for distributing digital video content, the system comprising:

- a sending processor 24 operable to distribute video content over a network to at least one storage location, the video content including a plurality of media assets and associated metadata combined into groupings, the groupings determined by at least one criteria common to the media assets and not determined by content preference of a consumer (items may be grouped based on demographic information, whether a subscriber has never previously requested the items, or a

correlation between artists, movies, or applications)(col. 4, l. 45-49, 55-58; col. 5, l. 6-28, 55-57; col. 6, l. 1-11; col. 8, l. 38-67; col. 9, l. 38-39; & Figs. 2, 6), the sending processor operable to aggregate the groupings into at least one rollout for presentation to at least one group of consumers selected based on at least one common criteria of the consumers (col. 5, l. 22-28; col. 9, l. 62-67; col. 10, l. 1-16; & Fig. 8); and

- a receiving processor 176 at each storage location operable to receive the video content from said sending processor and refresh a content database 56 (local storage) based on the video content received (col. 6, l. 1-7), said content database adapted to provide the at least one group of consumers access to the video content stored therein for a predetermined interval of time having a programmed begin date and a programmed end date (Payton discloses a list that determines which items will be added to or deleted from the local storage and that the list of recommended items is updated periodically)(col. 3, l. 15-17; col. 6, l. 1-9, 63-67; col. 7, l. 1-12, 61-67; col. 8, l. 1-10, 26-36; col. 9, l. 62-67; & col. 10, l. 1-16).

Referring to claims **2**, **9**, and **16**, Payton discloses the system of claims 1, 8, and 15, respectively, wherein said receiving processor is operable to refresh said content database based on the at least one common criteria of the consumers (col. 8, l. 50-67; col. 9, l. 1-13; & Figs. 6, 7a, 7b).

Referring to claims **3**, **4**, **10**, **11**, **17**, **18**, **23-25**, **32-33**, and **37**, Payton discloses the systems/methods of claims 2, 3, 9, 10, 16, 22, 23, and 29, respectively, wherein the at least one

common criteria of the consumers includes the content usage by the consumers, and wherein the content usage includes the viewing and listening habits of each consumer (col. 4, l. 57-58 & col. 8, l. 38-49).

Referring to claims **6**, **7**, **13**, **14**, **20**, **21**, **27**, and **28**, Payton discloses the systems of claims 1, 6, 9, 13, 15, 20, 22, and 27, respectively, wherein said receiving processor is operable to refresh said content database based on one or more contractual obligations associated with the content, and wherein one of the contractual obligations includes a price charged for media content access (col. 7, l. 65-67 & col. 8, l. 1-5).

Referring to claim **30**, Payton discloses the system of claim 29, wherein said receiving processor is programmed to offer each consumer an extension of time before purging the media content (the examiner notes that items are added and deleted from storage according to a level of priority that is determined by user interaction with the item. Therefore, by interacting with a particular item more often, the period of time that the item is stored is extended.)(col. 8, l. 26-37).

Referring to claims **31** and **35**, Payton discloses the system of claim 29, wherein said receiving processor is programmed for secured access to media content and to decrypt media content that is encrypted (col. 4, l. 64-66).

Referring to claim **38**, Payton discloses the system of claim 29, wherein the media content includes media content selected by one of the consumers (col. 6, l. 7-11).

Referring to claim **39**, Payton discloses the system of claim 29, wherein said receiving processor and database are located proximate a visual display accessible by one of the consumers (col. 6, l. 20-23).

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

4. Claims **5**, **12**, **19**, **26**, **34** are rejected under 35 U.S.C. 103(a) as being unpatentable over Payton in view of Eldering et al.

Referring to claims **5**, **12**, **19**, **26**, and **34**, Payton discloses the systems of claims 3, 10, 15, 23, and 29, respectively. Payton does not disclose that the content usage includes an amount of time each consumer views the content. Eldering et al. discloses a system for characterizing subscribers, wherein the time duration of a user's viewing is monitored. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to include monitoring a user's viewing time such as that taught by Eldering et al. in order to better provide subscribers with programming and advertising which will be of interest to them (col. 1, l. 64-66).

5. Claim **36** is rejected under 35 U.S.C. 103(a) as being unpatentable over Payton.

Referring to claim **36**, Payton discloses the system of claim 29. Payton further discloses a CD ROM writer 65, which writes a digital audio signal onto a blank CD ROM, which can then be played on a separate audio system. Payton does not disclose preventing unauthorized copying of the media content. Applicant's failure to adequately traverse the Examiner's taking of

Official Notice (that preventing the copying of media data is well known within the prior art) in the last Office Action is taken as an admission of the fact(s) noticed. It would have been obvious to one of ordinary skill in the art at the time that the invention was made to modify Payton to prevent copying of media data, such as that taught by the admitted prior art in order to ensure that media providers are properly compensated for distributing media.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Van Handel whose telephone number is 571-272-5968. The examiner can normally be reached on 8:00am-5:30pm Mon.-Fri..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Chris Kelley can be reached on 571-272-7331. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

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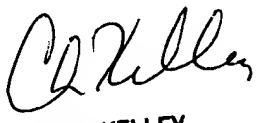

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